IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

TUESDAY, THE 13TH NOVEMBER 2007 / 22ND KARTHIKA 1929

OP.No. 13519 of 1999(H)

PETITIONER:

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1. THE THIRUMBADI RUBBER CO. LTD., "COWCOODY CHAMBERS"
   234-A, RACE COURSE ROAD, COIMBATORE 641 018

2. H.C. LAKHANI, DIRECTOR, DO.DO.

BY ADV. SRI.P.BALACHANDRAN

RESPONDENTS:

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1. DEPUTY COMMISSIONER OF INCOME TAX (ASSMT.),
   SPECIAL RANGE-I, ERNAKULAM.

2. INSPECTING ASSISTANT COMMISSIONER (SPL.)
   AGRICULTURAL INCOME TAX AND SALES TAX, KOZHIKODE.

3. UNION OF INDIA, REPRESENTED BY SECRETARY TO REVENUE DEPARTMENT,
   MINISTRY OF FINANCE, CENTRAL BLOCK, NEW DELHI 110 001.

4. CENTRAL BOARD OF DIRECT TAXES, DEPARTMENT OF REVENUE, MINISTRY
   OF FINANCE, NEW DELHI 110 001

5. COMMISSIONER OF INCOME TAX, CR BUILDINGS, I.S. PRESS ROAD,
   COCHIN 682 018

R3 AND R4 BY ADV. SRI.N.SUGATHAN
R1, R2 & R5 BY ADVS. SRI.P.K.R.MENON(SR.),SC FOR IT
SRI.GEORGE K. GEORGE, SC FOR IT

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 13/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON 21819 OF 1999 IN OP 13519 OF 1999

DISMISSED

13.11.2007 SD/-C.N.RAMACHANDRAN NAIR, JUDGE.

APPENDIX

PETITIONERS' EXHIBITS:

EXT.P1 TRUE COPY OF INTIMATION ISSUED BY RESPONDENT NO.1 DATED 23.3.1995

EXT.P2 TRUE COPY OF THE ASSESSMENT ORDER UNDER SECTION 143(3) PASSED BY THE FIRST RESPONDENT DATED 22.1.1997

EXT.P3 TRUE COPY OF THE ASSESSMENT ORDER DATED 5.12.1996 PASSED BY THE SECOND RESPONDENT.

EXT.P4 TRUE COPY OF THE ORDER PASSED UNDER SECTION 263 BY THE FIFTH RESPONDENT DATED 23.2.1999.

RESPONDENTS' EXHIBITS: NIL.

TRUE COPY

P.S. TO JUDGE.

C.N. RAMACHANDRAN NAIR, J.

O.P. NO. 13519 OF 1999

Dated this the 13th day of November, 2007

JUDGMENT

O.P. is filed challenging the order issued under Section 263 of the Income-tax Act by the Commissioner of Income-tax directing the revision of petitioner's income-tax assessment for the assessment year 1994-95 to include income from centrifuging of rubber. Centrifuging of natural rubber was initially not treated as industrial operation by the Income-tax Department and therefore no income tax assessment was made on income therefrom. However, by virtue of later decision of this Court holding it as a manufacturing activity, the department proceeded to assess income from centrifuging of rubber. Even though the order under challenge is tenable by virtue of decision of this Court, the Central Board has vide circular No. 5/2003 dated 22.5.2003 decided not to reopen any case prior to 2002-03 if the assessees have paid agricultural income-tax. Even though documents are not produced, counsel for the petitioner submitted that agricultural income-tax due for the relevant year was paid by the company and the same will be borne

out by assessment records of Agrl. income tax department. Going by the practice of assessees generally, petitioner would have paid agricultural income tax on income from centrifuging of rubber also, as it was all through treated as processing of agricultural produce to make it fit for marketing. In the circumstances, O.P. is disposed of directing the Joint Commissioner of Income-tax (Assessment) to verify the AIT records of the petitioner and if income from centrifuging of rubber is assessed for the relevant year, to drop the proceedings pursuant to the direction issued by the Commissioner of Income tax under the impugned order issued under Section 263 of the I.T. Act or proceed to make assessment based on the said order, only if he finds that income from centrifugal latex was not assessed to agricultural income tax.

(C.N. RAMACHANDRAN NAIR)
Judge